

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 21, 1999

IN RE:

**PETITION OF AT&T COMMUNICATIONS OF
THE SOUTH CENTRAL STATES, INC. FOR
PERMISSION TO ACQUIRE THE PROPERTY OF
SMARTALK TELESERVICES, INC. AND CERTAIN
SUBSIDIARIES PURSUANT TO T.C.A § 65-4-112**

**DOCKET NO.
99-00156**

**ORDER APPROVING ACQUISITION OF ASSETS AND THE
CANCELLATION OF SMARTALK TELESERVICES, INC.'S
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

This matter came before the Tennessee Regulatory Authority ("Authority") on the Petition of AT&T Communications of the South Central States, Inc. ("AT&T") pursuant to Tenn. Code Ann. § 65-4-112. The Petition filed by AT&T seeks the approval of conditional authority to acquire the assets of SmarTalk Teleservices, Inc., ("SmarTalk") pursuant to an Asset Purchase Agreement ("Agreement"), entered into between AT&T and SmarTalk on January 19, 1999, and filed with the Authority on March 8, 1999.

The Directors of the Authority considered this matter at a regularly scheduled Authority Conference on March 16, 1999. Based upon careful consideration of the Petition, the exhibits, and the entire record of this matter, the Authority has determined the following:

1. SmarTalk is a California corporation with its principal place of business at 5080 Tuttle Crossing Boulevard, Dublin, Ohio 43016-3566. SmarTalk develops,

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manufactures, sells and provides prepaid telecommunication products and services, including prepaid local and long-distance calling cards and prepaid wireless telephones and services. SmarTalk provides resold interexchange telecommunications services in Tennessee pursuant to authority granted by the Tennessee Public Service Commission ("TPSC") in Docket No. 95-03091 on October 13, 1995.

2. At the present time, SmarTalk is operating under Chapter 11 of the United States Bankruptcy Code, as a debtor-in-possession, subject to approval of the United States Bankruptcy Court for the District of Delaware in Wilmington (Case Numbers 99-108 through 99-127 (MFW)). On January 19, 1999, SmarTalk filed a motion for authorization to sell assets to AT&T. The Agreement makes the approval of the bankruptcy court (including the court's approval of the Agreement, the asset sale, the assignment and assumption of the contracts as well as a finding of AT&T as a "good faith purchaser") a condition to closing. It is AT&T's intent to close this proposed transaction on or before April 1, 1999. At that time, AT&T will assume responsibility for serving all of SmarTalk's customers.

3. The assets to be acquired at the closing of the proposed transaction include: leased real property (owned, licensed and patent/trademark applications); certain telecommunications equipment and facilities; office furniture and equipment; books and records; and cash on hand, accounts receivable and other current assets as shown on the balance sheet as of the closing.

4. As part of the Agreement, AT&T will assume the unused minutes on all SmarTalk's Prepaid Calling Cards and for all Prepaid Wireless Obligations. The Prepaid Calling Card obligation includes all cards sold or distributed by SmarTalk prior to the

Closing Date that entitle the holder to make local, long distance or international telephone calls not in excess of a pre-existing amount of calling time (without further payment), but excluding cards first activated (or last recharged) earlier than two years prior to the Closing Date. Prepaid Wireless Obligations include the obligations to provide prepaid units of wireless calling time to any end-user customer in connection with products, sold or distributed by Sellers prior to the Closing Date, but excluding any such obligations for prepaid cards or prepaid phones first activated earlier than three months prior to the Closing Date.

5. In conjunction with the Agreement, SmarTalk requests that its Certificate of Public Convenience and Necessity be withdrawn and cancelled coincident with the Closing Date (April 1, 1999). Tenn. Code Ann. § 65-4-112(a) requires approval from the Authority before a public utility may merge or consolidate its property with that of another utility. Accordingly, pursuant to Tenn. Code Ann. § 65-4-112(a), AT&T has sought the Authority's approval of its purchase of SmarTalk.

I. CRITERIA FOR APPROVING MERGER

A merger or consolidation of property between regulated public utilities is not valid until approved by the Authority under the provisions of Tenn. Code Ann. § 65-4-112. In addition, under Tenn. Code Ann. § 65-4-101, any entity that owns, operates, manages or controls utility systems, plant or equipment under certification by this Authority or its predecessor, the Tennessee Public Service Commission, to provide utility service in the state of Tennessee, is a public utility. Since this merger involves two entities holding certificates in Tennessee, Authority approval is required under the provisions of Tenn. Code Ann. § 65-4-112(a). This Section provides for the following:

(a) No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

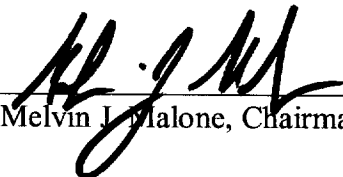
II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

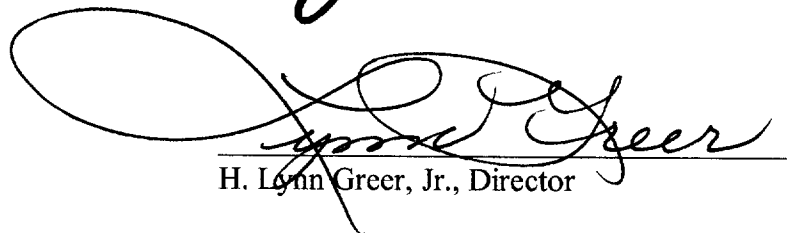
After consideration of the entire record in this matter, including the Petition, the Directors find and conclude as follows:

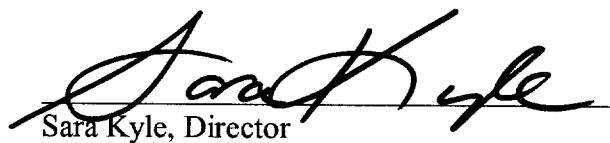
1. That AT&T and SmarTalk have been engaged in the business of providing telecommunications services in Tennessee;
2. That the Authority has jurisdiction over the subject matter of the Petition pursuant to Tenn. Code Ann. § 65-4-112;
3. That the proposed transaction between AT&T and SmarTalk will be accomplished by the Agreement executed between the parties on January 19, 1999, through which AT&T will acquire substantially all of the assets and liabilities of SmarTalk;
4. That after the proposed acquisition of SmarTalk's assets and liabilities by AT&T, SmarTalk will cease to operate as reseller of intrastate interexchange telecommunications services in Tennessee; and
5. That based upon the foregoing, the acquisition of SmarTalk's assets and liabilities by AT&T is reasonable and compatible with the public interest and should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Petition of AT&T Communications of the South Central States, Inc. for approval to acquire the property of SmarTalk TeleServices, Inc. is granted.
2. The request of SmarTalk Teleservices, Inc. to have its Certificate of Public Convenience and Necessity (granted in Docket No. 95-03091) withdrawn and cancelled, is granted.
3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary